IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-12-2007

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THE HON'BLE MR.JUSTICE M.JAICHANDREN

W.P.No.4944 of 1998

Kanyakumari Medical Mission,
C.S.I.Hospital, Neyyoor,
rep. by its Treasurer,
D.Sunil Prakash. .. Petitioner.

Versus

1.The Municipal Commissioner,
Kuzhithurai Municipality,
Kuzhithurai, Kanyakumari District.

2.The District Collector,
Nagercoil, Kanyakumari District. .. Respondents.

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for a wit of certiorarified Mandamus, calling for the records relating to the proceedings of the first respondent in R.O.C.No.1/97, dated 9.1.1998, demanding the petitioner to pay a sum of Rs.50,400/- towards property tax for the buildings bearing DoorNos.25-64A in Ward No.14 of Kuzhithurai Municipality wherein the School of Nursing, Marthandam and the hostel for the students are situate, quash the same and direct the respondents to refrain from demanding or collecting any property tax from the petitioner.

For petitioner : Mr.V.Selvaraj

For respondent : Mr.G.Munirathinam (R1)

Mr.V.Manoharan
Government Advocate (R2)

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O R D E R

Heard Mr.V.Selvaraj the learned counsel appearing for the petitioner and Mr.G.Munirathinam the learned counsel appearing for the first respondent and Mr.V.Manoharan, the learned Government Advocate appearing for the second respondent.

2. The brief facts of the case necessary for the disposal of this writ petition, are as follows:

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a) The London Missionary Society Corporation was founded in the year 1928. As a registered body, the said Corporation had been established to hold the properties belonging to the Protestant Church, formerly known as London Mission Church, the educational institutions, the hospitals and other institutions founded by the missionaries. Later, the London Mission Church in India and other properties were divided into two entities, namely, the Church of North India and the Church of South India. The Church of South India controls 22 Dioceses. One of the Dioceses under the control of the Church of South India is the Kanyakumari Diocese.

b) The missionaries who founded the London Mission Society had established several educational institutions, Hospitals, Orphanages and other institutions of a charitable nature. There are 435 Churches under the Church of South India, Kanyakumari Diocese. There are many Colleges, Orphanages and other institutions of a charitable nature, being run under the control of the Church of South India, Kanyakumari Diocese. The Church of South India, Kanyakumari Diocese, is governed by its own constitution with its office bearers elected once in three years. There are separate organs under the diocese to administer the institutions under its control. The hospitals are under the supervision and control of the Kanyakumari Medical Mission, one of the organs of the Church of South India, Kanyakumari Diocese. By G.O.Ms.No.751, Health and Family Welfare department, dated 3.6.93, the Government of Tamil Nadu permitted the Kanyakumari Medical Mission, CSI Hospital, Marthandam, to start a Diploma in Nursing Course, subject to the condition that no capitation fee in any form should be collected from the candidates. The School of Nursing at Marthandam was started during the academic year 1993 - 1994. The Nursing School is attached to the CSI hospital at Marthandam, which is recognised as a charitable institution. Another Nursing School attached to the CSI Hospital, Neyyoor, was started 40 years ago. No property tax was demanded by the local authorities with regard to the hospitals and other institutions.

c) As per Section 83(c) of the Tamil Nadu District Municipalities Act, 1920, buildings used for educational purposes including hostels, shall be exempted from payment of property tax. However, the first respondent, in violation of the provisions of the State Act, is demanding payment of property tax for the building in the occupation of the Nursing School at Marthandam. Even though the management of the Nursing School is not receiving any tution fees from the students, the first respondent has refused to exempt the buildings used by the said school from the payment of property tax by the impugned proceedings in Roc.No.1/97, dated 9.1.1998.

3. In the counter affidavit filed on behalf of the first respondent, it has been stated that the Nursing School and the Hostels, attached to the CSI Hospital at Marthandam, had been assessed for the purpose of levying property tax. As per Section 83 (1)(c) of the Tamil Nadu District Municipalities Act, 1920, as

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amended by the Tamil Nadu Act XVII, 1990, the words "Buildings used for educational purposes, including hostels" had been omitted. Even though the buildings used for educational purposes including hostels had been originally exempted from payment of property tax, the exemption had been omitted after the amendment made in Section 83(1)(c) of the Tamil Nadu District Municipalities Act, 1920.

4. The learned counsel appearing for the first respondent had submitted that the Buildings and the hostels belonging to the Nursing school, excluding play grounds and open space used for the students were liable for the payment of property tax, as per G.O.Ms.94, Municipal Administration and Water Supply Department, 18.3.1994.

5. The learned counsel appearing on behalf of the petitioner had submitted that the Tamil Nadu Act XVII of 1990, amending Sub Clause (c) of Clause (1) of Section 83 of the Tamil Nadu District Muncipalities Act, 1920, had never come into force, as it had not been notified. Therefore, the withdrawal of exemption granted to the buildings and Hostels of the Nursing School, run by the petitioner, is illegal and invalid in the eye of law.

6. The learned counsel appearing on behalf of the first respondent, while denying the claims made by the learned counsel appearing for the petitioner, had placed before this court, a Circular in Roc.No.23698/93/R1, dated 15.7.1994, issued by the office of the Director of Municipal Administration, Chennai, reads as follows:

> "The Amendment Act No.42 of 1994 amending Section 83 of the T.N.D.M. Act providing for exemption from property tax for "buildings used for education purpose including hostels attached thereto, public buildings and places used for charitable purpose" has been published in the T.N.Govt. Gazettee Extraordinary on 30.6.94. the amendment has been given effect from 18.10.90. A copy of the Amendment Act is also enclosed for necessary action"

7. The learned counsel appearing on behalf of the first respondent had also submitted that in view of the Tamil Nadu Municipal Laws (Amendment) Act, 1994, sub clause (c) of clause (1) of Section 83 of the Tamil Nadu District Municipalities Act, 1920, has been restored to its original position, as it existed prior to the enactment of the Tamil Nadu Act XVII, 1990.

8. It has also been submitted by the learned counsel appearing for the first respondent that the impugned proceedings of the first respondent in Roc.No.1/97, dated 9.1.98, would not be enforced against the petitioner in view of the enactment of the Tamil Nadu Municipal Laws (Amendment) Act, 1994.

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9. At this stage of hearing of the writ petition, the learned counsel appearing on behalf of the petitioner had submitted that the petitioner had deposited 50% of the tax demanded by the first respondent, pursuant to the order of this Court, dated 17.8.98, made in W.M.P.No.7663 of 1998. In view of the submissions made by the learned counsel appearing for the respondents, the amount deposited by the petitioner is to be refunded by the respondents.

10. Based on the submissions made by the learned counsel appearing for the petitioner, as well as the respondents, it is clear that the impugned proceedings of the first respondent, dated 9.1.98, made in Roc.No.1 of 1997, demanding payment of property tax from the petitioner is liable to be set aside, in view of the Tamil Nadu Municipal Laws (Amendment) Act, 1994. While setting aside the impugned proceedings of the second respondent, dated 9.1.98, the respondents are directed to refund the amount paid by the petitioner as property tax pursuant to the order of this Court, dated 17.8.1998, made in WMP.No.7663 of 1998.

The writ petition is allowed with the above directions.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

csh

To

1.The Municipal Commissioner,
Kuzhithurai Municipality,
Kuzhithurai, Kanyakumari District.

2.The District Collector,
Nagercoil, Kanyakumari District.

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1 cc to Mr.V. Selvaraj, Advocate, SR. 73067
1 cc to Mr.G. Munirathinam, Advocate, sr. 72824

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JRG (CO)
kk 29/1

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